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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke  
Probation Against:

Case No. 2009-302

13  
14 DENNIS FERNANDEZ PASTONES  
A.K.A. DENNIS F. PASTONES  
15 236 W. Portal Avenue, #569  
San Francisco, California 94127  
16 Registered Nurse License No. 494967

PETITION TO REVOKE PROBATION

17 Respondent.  
18

19 Complainant alleges:

20 PARTIES

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to Revoke  
22 Probation solely in her official capacity as the Executive Officer of the Board of Registered  
23 Nursing, Department of Consumer Affairs.

24 2. On or about August 31, 1993, the Board of Registered Nursing issued Registered  
25 Nurse License Number 494967 to Dennis Fernandez Pastones, also known as Dennis F. Pastones  
26 (Respondent). The Registered Nurse License expired on January 31, 2009, and has not been  
27 renewed.

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3. In a disciplinary action entitled "In the Matter of the Accusation Against Dennis Fernandez Pastones," Case No. 2002-153, the Board of Registered Nursing issued a decision, effective November 14, 2002, in which Respondent's Registered Nurse License was revoked. Subsequently, in a disciplinary action entitled "In the Matter of the Petition for Reinstatement of Dennis F. Pastones," OAH Case No. L2006080708, the Board of Registered Nursing issued a decision, effective December 7, 2006, in which Respondent's petition for reinstatement of Registered Nurse License No. 494967 was granted. However, upon reinstatement of his license, said license was immediately revoked, the order of revocation stayed, and Respondent placed on probation for a period of five (5) years, with certain terms and conditions. A copy of that decision and the prior decision imposing revocation are attached as Exhibit A and are incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs.

5. Section 118, subdivision (a) of the Business and Professions Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

### FIRST CAUSE TO REVOKE PROBATION

(Comply with the Board's Probation Program)

6. At all times after the effective date of Respondent's probation,  
Condition 2 stated:

**COMPLY WITH THE BOARD'S PROBATION.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

7. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 2, by not complying with the conditions as stated therein.

### SECOND CAUSE TO REVOKE PROBATION

#### (Submit Written Reports)

8. At all times after the effective date of Respondent's probation, Condition 5 stated:

SUBMIT WRITTEN REPORTS. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verifications of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

9. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above, by not submitting Quarterly Reports for the following quarters:

#### Reporting Quarter

April – June 2007

July – September 2007

October – December 2007

January – March 2008

April – June 2008

July – September 2008

October – December 2008

### THIRD CAUSE TO REVOKE PROBATION

#### (Physical Examination)

10. At all times after the effective date of Respondent's probation, Condition 14 stated, in pertinent part:

PHYSICAL EXAMINATION. Within 45 days of the effective date of this decision, Respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 14, referenced above, by not submitting a physical evaluation to the Board.

#### FOURTH CAUSE TO REVOKE PROBATION

(Participate in Treatment/Rehabilitation Program for Chemical Dependence)

12. At all times after the effective date of Respondent's probation, Condition 15 stated:

PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE. Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation prior to the commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, Respondent shall be required to attend at least one, but no more than five 12-step recovery meeting or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, referenced above, by not submitting verification of attendance for two Nursing Support Group meetings per month and one AA/NA meeting per week.

#### FIFTH CAUSE TO REVOKE PROBATION

(Submit to Tests and Samples)

14. At all times after the effective date of Respondent's probation, Condition 17 stated, in pertinent part:

SUBMIT TO TEST AND SAMPLES. Respondent at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The length of time and frequency will be subject to approval by the Board. The Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and

1 ensure that reports are submitted directly by the testing agency to the Board, as  
2 directed. Any confirmed positive finding shall be reported immediately to the Board  
3 by the program and the Respondent shall be considered in violation of probation.

4 In addition, the Respondent, at any time during the period of probation, shall fully  
5 cooperate with the Board or any of its representatives, and shall, when requested,  
6 submit to such tests and samples as the Board or its representatives may require for  
7 the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled  
8 substances.

9 15. Respondent's probation is subject to revocation because he failed to comply  
10 with Probation Condition 17, referenced above, by not participating in the random, biological  
11 fluid testing or drug screening program. To date, Respondent has not signed up with Compass  
12 Vision.

#### 13 SIXTH CAUSE TO REVOKE PROBATION

##### 14 (Mental Health Examination)

15 16. At all times after the effective date of Respondent's probation, Condition 18 stated, in  
16 pertinent part:

17 MENTAL HEALTH EXAMINATION. The Respondent shall, within 45 days of the  
18 effective date of this decision, shall have a mental health examination including  
19 psychological testing as appropriate to determine his/her capability to perform the  
20 duties of a registered nurse. The examination will be performed by a psychiatrist,  
21 psychologist or other licensed mental health practitioner approved by the Board. All  
22 costs are the responsibility of the Respondent. Recommendations for treatment,  
23 therapy or counseling made a result of the mental health examination will be  
24 instituted and followed by the Respondent.

25 17. Respondent's probation is subject to revocation because he failed to comply with  
26 Probation Condition 18, referenced above, by not submitting a mental health examination to the  
27 Board.

#### 28 SEVENTH CAUSE TO REVOKE PROBATION

##### (Therapy or Counseling Program)

18. At all times after the effective date of Respondent's probation, Condition 19 stated:

27 THERAPY OR COUNSELING PROGRAM. The Respondent, at his expense, shall  
28 participate in an on-going counseling program until such time as the Board releases  
him from this requirement and only upon the recommendation of the counselor.

Written progress reports from the counselor will be required at various intervals. The counseling program shall include anger management.

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 19, referenced above, by not submitting verification of on-going therapy or counseling program.


PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nurse issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in OAH Case No. L2006080708, and imposing the disciplinary order that was stayed, thereby revoking Registered Nurse License No. 494967, issued to Dennis Fernandez Pastones, also known as Dennis F. Pastones (Respondent); and

2. Taking such other and further action as deemed necessary and proper.

DATED: 5/28/09

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SF2009403633  
CSR: 05/11/09  
pet revoke prob.rtf

## **Exhibit A**

**Decision and Order**

**OAH Case No. L2006080708**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement:

**DENNIS F. PASTONES**

Registered Nurse License No. 494967

Petitioner.

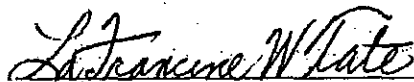
OAH No. L2006080708

**DECISION**

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on December 7, 2006.

IT IS SO ORDERED this 7<sup>th</sup> day of November 2006.



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California



**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of:

**DENNIS F. PASTONES,**  
Registered Nursing License No. 494967

Petitioner.

OAH No. L2006080708

**DECISION GRANTING THE  
PETITION**

This matter was heard by a quorum of the Board of Registered Nursing (Board) on September 14, 2006, in Ontario, California. The Board members participating in the hearing and decision were LaFrancine Tate, Public Member, President; Grace Corse, RN, Vice-President; Carmen Morales-Board, MSN, RN, NP; Elizabeth O. Dietz, Ed.D., RN, CS-NP; Orlando H. Pile, M.D.; and Susanne Phillips, MSN, RN, APRN-BC, FNP. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Petitioner was present and represented himself.

Nancy A. Kaiser, Deputy Attorney General, represented the Office of the Attorney General, California Department of Justice.

The petition and other relevant documents were presented. Petitioner and the Deputy Attorney General made oral presentations to the Board. Petitioner responded to questions of Board members and the Deputy Attorney General. The record was closed, the Board met in executive session, and the matter was submitted on September 14, 2006.

**FACTUAL FINDINGS**

1. On August 31, 1993, the Board issued Registered Nurse License No. 494967 to Petitioner.

2A. The Board, by Default Decision and Order, effective November 14, 2002, in resolution of Board case number 2002-153, revoked Petitioner's license.

2B. The Board's discipline was based on findings that in April 1999 Petitioner had been convicted of violating Health and Safety Code section 11364 (possession of instruments for injecting or smoking controlled substances), a misdemeanor; on many occasions from January through September 1997 he self-administered methamphetamine without legal authority; and on February 13, 2001, he had used methamphetamine to the extent that his ability to safely practice nursing was impaired.

2C. Petitioner was not ordered to pay to the Board costs associated with the Board's investigation and prosecution of that matter.

3. The petition was filed timely and meets all jurisdictional requirements.

4A. Petitioner committed criminal offenses since the Board's disciplinary action. On February 4, 2000, and again on August 29, 2001, in two separate criminal cases, Petitioner plead guilty to violating Health and Safety Code section 13377, subdivision (a) (illegal possession of a controlled substance).

4B. In both cases, entry of judgments of conviction against Petitioner were deferred, and Petitioner was placed on probation which required, among other terms, that he complete a comprehensive drug and alcohol treatment program. After he successfully completed his probation in those matters, no conviction was entered and both cases were dismissed.

5. With regard to the conviction that was the subject of the revocation of his license, Petitioner similarly participated in a deferred entry of judgment program, where he was placed probation, entry of his conviction was deferred, and his case was dismissed after he successfully completed his probation. In that case Petitioner was also required to complete a comprehensive drug and alcohol treatment program as part of his probation.

6. In light of his successfully completing three different drug and alcohol treatment programs and a moderate period of recent sobriety, Petitioner demonstrated his ability to safely practice as a nurse relative to his prior problems associated with controlled substances. Moreover, the Board is encouraged that Petitioner is not in denial of drug problem and that he did not previously report to work as a nurse under the influence of drugs or otherwise abuse his position as a licensed nurse. In fact, before his license was revoked, Petitioner consistently received positive employment evaluations as a nurse. All of the misconduct surrounding the revocation of his license occurred in his personal life.

7. Many of the above-described problems Petitioner encountered were the result, in part, of domestic disturbances between Petitioner and his ex-wife. It is clear to the Board that Petitioner had a difficult time managing his anger, which contributed to some of those problems. It is not apparent that Petitioner is currently fully in control of his anger. However, Petitioner has long since been divorced from that woman and no longer has significant contact with her. He is making child support payments for the child(ren) they had together. Petitioner is now engaged to be married to another woman and they are expecting a child. Petitioner testified that he has mellowed and matured with age and now no longer gets upset about domestic situations as he did before.

8. Petitioner established it would not be inconsistent with the public interest to reinstatement of his license, under appropriate terms and conditions.

## LEGAL CONCLUSIONS

1. Petitioner has the burden of establishing by clear and convincing evidence that he is entitled to the requested relief. (Bus. & Prof. Code, § 2760.1, subd. (b).)

2. Petitioner clearly and convincingly established that cause exists to reinstate his license, pursuant to Business and Professions Code section 2760.1, and California Code of Regulations, title 16, section 1445. Petitioner established sufficient rehabilitation from his convictions and prior substance abuse problem. Under these circumstances, the Board is satisfied that public protection will not be jeopardized by reinstating Petitioner's license. (Factual Findings 1-8.)

3. However, the public will be fully protected only if such reinstatement is on a probationary basis. Both Government Code section 11522, and Business and Professions Code section 2760.1, subdivision (e), provide the Board with the authority to reinstate a previously revoked license upon appropriate "terms and conditions." In this case, Petitioner's past misconduct related to the illegal possession and use of controlled substances. Petitioner has been sober only a moderate period of time. Thus, a five-year probation is warranted, with terms and conditions including that he comply with the Board's addiction recovery program. In addition, Petitioner has been without his license for almost 4 years and has not taken any nursing refresher courses recently. Petitioner must take a nursing refresher course(s). Moreover, since Petitioner did not establish that he is fully in control of his anger, a situation which led, in part, to some of the problems underlying revocation of his license, probation term number 19 in this case shall include that Petitioner's required counseling address anger management issues. (Factual Findings 1-8.)

## ORDER

The petition of Dennis F. Pastones (hereinafter Respondent) for reinstatement of licensure is granted. A license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed, and Respondent placed on probation for a period of five years. Respondent shall enroll in and successfully complete a refresher course or an equivalent set of courses as approved by representatives of the Board. Respondent is suspended from practice until the required course work is successfully completed, but may use his license for the limited purpose of completing requirements of the required course work. The probation includes the following terms and conditions:

## **SEVERABILITY CLAUSE**

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

**(1) OBEY ALL LAWS**

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

**(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM**

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

**(3) REPORT IN PERSON**

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

**(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE**

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

**(5) SUBMIT WRITTEN REPORTS**

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

**(6) FUNCTION AS A REGISTERED NURSE**

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and the Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

**(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS**

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

#### **(8) SUPERVISION**

Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the Respondent with or without Respondent present.

#### **(9) EMPLOYMENT LIMITATIONS**

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

#### **(10) COMPLETE A NURSING COURSE(S)**

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

#### **(11) COST RECOVERY**

Respondent owes no costs to the Board associated with its investigation and enforcement of the revocation matter.

#### **(12) VIOLATION OF PROBATION**

If a Respondent violates the conditions of his/her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

### **(13) LICENSE SURRENDER**

During Respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

1. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
2. One year for a license surrendered for a mental or physical illness.

### **(14) PHYSICAL EXAMINATION**

Within 45 days of the effective date of this decision, Respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.



If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

**(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE**

Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

**(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS**

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or

physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

#### **(17) SUBMIT TO TESTS AND SAMPLES**

Respondent, at his/her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the Respondent shall be considered in violation of probation.

In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the Respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

#### **(18) MENTAL HEALTH EXAMINATION**

The Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner

approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified Respondent that a mental health determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

#### **(19) THERAPY OR COUNSELING PROGRAM**

Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals. The counseling program shall include anger management.

IT IS SO ORDERED. This Decision shall be effective December 7, 2006.

Dated: November 7, 2006



LaFrancine Tate, Public Member, President,  
For the Board of Registered Nursing  
Department of Consumer Affairs

1 BILL LOCKYER, Attorney General  
of the State of California  
2 CAROL S. ROMEO, State Bar No. 124910  
Deputy Attorney General  
3 California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
4 San Francisco, CA 94102-7004  
Telephone: (415) 703-5548  
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **Dennis Fernandez Pastones**  
12 437 Holly Street  
13 Vallejo, CA 94589

14 **Registered Nurse License No. 494967**

15 Respondent.

Case No. 2002-153

OAH No.

**DEFAULT DECISION**  
**AND ORDER**

[Gov. Code, §11520]

16 **FINDINGS OF FACT**

17 1. On or about May 30, 2002, Complainant Ruth Ann Terry, M.P.H., R.N., in  
18 her official capacity as Executive Officer of the Board of Registered Nursing, Department of  
19 Consumer Affairs, State of California, filed Accusation No. 2002-153 against Dennis Fernandez  
20 Pastones (Respondent) before the Board of Registered Nursing (Board).

21 2. On or about August 31, 1993, the Board of Registered Nursing issued  
22 Registered Nurse License No. 494967 to Respondent. The license will expire on January 31,  
23 2003, unless renewed.

24 3. On or about June 11, 2002, Staci Caston, an employee of the Department  
25 of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2002-153,  
26 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code  
27 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which  
28 was and is 437 Holly Street, Vallejo, CA 94589. A copy of the Accusation, the related

1 documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by  
2 reference.

3 4. Service of the Accusation was effective as a matter of law under the  
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about June 25, 2002, the aforementioned documents were returned  
6 by the U.S. Postal Service marked "Addressee Unknown." A copy of the postal returned  
7 documents are attached hereto as exhibit B, and are incorporated herein by reference.

8 6. Government Code section 11506 states, in pertinent part:

9 "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
11 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
12 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

13 7. Respondent failed to file a Notice of Defense within 15 days after service  
14 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
15 Accusation No. 2002-153.

16 8. California Government Code section 11520 states, in pertinent part:

17 "(a) If the respondent either fails to file a notice of defense or to appear at the  
18 hearing, the agency may take action based upon the respondent's express admissions or  
19 upon other evidence and affidavits may be used as evidence without any notice to  
20 respondent."

21 9. Pursuant to its authority under Government Code section 11520, the Board  
22 finds Respondent is in default. The Board will take action without further hearing and, based on  
23 Respondent's express admissions by way of default and the evidence before it, contained in  
24 exhibits A, B and C, finds that the allegations in Accusation No. 2002-153 are true.

25 10. The total costs for investigation and enforcement are \$4,074.00 as of July  
26 21, 2002. A copy of the Certification of Costs of Investigation and Prosecution is attached  
27 hereto as exhibit C, and is incorporated herein by reference.

28 DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Dennis Fernandez Pastones has subjected his Registered Nurse License No. 494967 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation:

a. Section 2762(f) of the Business and Professions Code (Code) (Conviction of a Substantially Related Crime); Section 2762(a) of the Code (Obtaining, Possessing, or Self-Administering a Controlled Substance); and Section 2762(b) (Use of a Controlled Substance).

## ORDER

IT IS SO ORDERED that Registered Nurse License No. 494967, heretofore issued to Respondent Dennis Fernandez Pastones, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on **NOVEMBER 14, 2002**

It is so ORDERED OCTOBER 15, 2002

Sandra L. Erickson  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

Attachments:

Exhibit A: Accusation No.2002-153, Related Documents, and Declaration of Service

Exhibit B: Postal Return Documents

1 Exhibit C: Certification of Costs of Investigation and Prosecution

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3 DOJ docket number:03579110-SF2001AD1068  
4 default decision.wpt 10/14/01

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Exhibit A  
Accusation No. 2002-153,  
Related Documents and Declaration of Service



1 BILL LOCKYER, Attorney General  
of the State of California  
2 CAROL S. ROMEO, State Bar No. 124910  
Deputy Attorney General  
3 California Department of Justice  
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4 San Francisco, CA 94102-7004  
Telephone: (415) 703-5548  
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2002-153

12 **DENNIS FERNANDEZ PASTONES**  
437 Holly Street  
13 Vallejo, CA 94589  
14 **Registered Nurse License No. 494967**

**ACCUSATION**

Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about August 31, 1993, the Board of Registered Nursing ("Board")  
22 issued Registered Nurse License Number 494967 to Dennis Fernandez Pastones ("Respondent").  
23 The license will expire on January 31, 2003, unless renewed.

24 **STATUTORY PROVISIONS**

25 3. Section 490 of the Business and Professions Code ("Code") provides, in  
26 pertinent part:

27 "A board may suspend or revoke a license on the ground that the licensee  
28 has been convicted of a crime, if the crime is substantially related to the qualifications, functions,

1 or duties of the business or profession for which the license was issued. A conviction within the  
2 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
3 contendere."

4 4. Section 2761 of the Code provides:

5 "The board may take disciplinary action against a certified or licensed  
6 nurse or deny an application for a certificate or license for any of the following:

7 "(a) Unprofessional conduct, which includes, but is not limited to,  
8 the following:

9 .....  
10 (f) Conviction of a felony or of any offense substantially related  
11 to the qualifications, functions, and duties of a registered nurse, in which event the record of the  
12 conviction shall be conclusive evidence thereof."

13 5. Section 2762 of the Code states:

14 "In addition to other acts constituting unprofessional conduct within the  
15 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
16 licensed under this chapter to do any of the following:

17 "(a) Obtain or possess in violation of law, or prescribe, or except  
18 as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or  
19 herself, or furnish or administer to another, any controlled substance as defined in Division 10  
20 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or  
21 dangerous device as defined in Section 4022.

22 "(b) Use any controlled substance as defined in Division 10  
23 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or  
24 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
25 dangerous or injurious to himself or herself, any other person, or the public or to the extent that  
26 such use impairs his or her ability to conduct with safety to the public the practice authorized by  
27 his or her license."

28 ///



1 11. The circumstances surrounding the conviction are substantially related to  
2 the qualifications, functions or duties of a registered nurse, as defined in Title 16, California  
3 Code of Regulations, section 1444, in that it evidences a present or potential unfitness on the part  
4 of Respondent to perform the functions authorized by the license in a manner consistent with the  
5 public health, safety, or welfare in that, on or about January 26, 1999, Respondent unlawfully  
6 possessed an opium pipe or a device, contrivance, instrument, or paraphernalia used for  
7 unlawfully injecting or smoking a controlled substance.

8 SECOND CAUSE FOR DISCIPLINE

9 (Obtaining, Possessing, or Self-Administering a Controlled Substance)

10 12. Respondent's license is subject to discipline under section 2761(a) and  
11 section 2762(a) of the Code, in that on divers occasions during January 1997, through September  
12 1997, he obtained, possessed, and self-administered methamphetamine, without a prescription  
13 therefor and without any other legal authority to do so, in violation of Health and Safety Code  
14 section 11350(a).

15 THIRD CAUSE FOR DISCIPLINE

16 (Use of a Controlled Substance)

17 13. Respondent's license is subject to discipline under section 2761(a) and  
18 section 2762(b) of the Code in that on or about February 13, 2001, he used methamphetamine to  
19 an extent or in such a manner which was dangerous or injurious to himself, any other person, or  
20 the public or to the extent that such usage impaired his ability to conduct with safety to the public  
21 the practice of nursing.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters  
24 herein alleged, and that following the hearing the Board issue a decision:

25 1. Revoking or suspending Registered Nurse License Number 494967, issued  
26 to Dennis Fernandez Pastones;


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1                   2.     Ordering Dennis Fernandez Pastones to pay the reasonable costs incurred  
2 by the Board in the investigation and enforcement of this case pursuant to section 125.3 of the  
3 Code;

4                   3.     Taking such other and further action as deemed necessary and proper.  
5

6                   DATED: 5/30/02  
7

8  
9   
10 RUTH ANN TERRY, M.P.H., R.N.  
11 Executive Officer  
12 Board of Registered Nursing  
13 Department of Consumer Affairs  
14 State of California  
15 Complainant  
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